

Exhibit G

From: Katy Peaslee <KPeaslee@susmangodfrey.com>
Sent: Monday, January 6, 2025 5:39 PM
To: Emily.Orman@lw.com; Elana.NightingaleDawson@lw.com; Alex Frawley; NYT-AI-SG-Service@simplelists.susmangodfrey.com
Cc: MicrosoftNYClassActionFDBR@faegredrinker.com; NewYorkTimes_Microsoft_OHS@orrick.com; openaicopyrightlitigation.lwteam@lw.com; KVP-OAI; OpenAICopyright@mofo.com
Subject: RE: NYT v. Microsoft et al - Production Deficiencies

[EXTERNAL]



Hi Emily,

The Times's **responses** below.

Best,
Katy

From: Emily.Orman@lw.com <Emily.Orman@lw.com>
Sent: Thursday, January 2, 2025 4:50 PM
To: Katy Peaslee <KPeaslee@susmangodfrey.com>; Elana.NightingaleDawson@lw.com; Alex Frawley <AFrawley@susmangodfrey.com>; NYT-AI-SG-Service@simplelists.susmangodfrey.com
Cc: MicrosoftNYClassActionFDBR@faegredrinker.com; NewYorkTimes_Microsoft_OHS@orrick.com; openaicopyrightlitigation.lwteam@lw.com; KVPOAI@keker.com; OpenAICopyright@mofo.com
Subject: RE: NYT v. Microsoft et al - Production Deficiencies

EXTERNAL Email

Katy,

Thanks for your time on Friday's meet and confer call. Below is a summary of our discussion regarding Plaintiff's production deficiencies identified in our December 17 email. While the bolded headers generally delineate the subject matter of the applicable discovery requests, they are not intended to capture the full substantive scope of such requests. Please provide us with the Times's positions regarding the deficiencies discussed herein, along with the corresponding promised updates, by **January 6**.

- **Deposit copies (RFP 14)**. The Times agreed to produce deposit copies for the Asserted Works, but the productions to date appear to only include deposit copies dating back to 2018. You stated that the Times has provided the deposit copies that were in readily producible form, and there has been a delay in converting the rest of the deposit copies into a more producible format. We asked you to confirm whether the forthcoming production will cover the earliest Asserted Works, and you noted that you would connect with the technical team and provide us an update this week as to (1) when we can expect to receive the rest of the documents, and (2) the date range of those documents. **A clarification on this: The Times has produced the deposit copies it has in electronic form. The Times has therefore set up access to copies of the published paper as follows: (1) credentials for Defendants to access a browser-based digital replica of all New York Times newspaper issues from 1851-2002, and (2) a copy of The Times's Parch Page Archive, which contains copies of the newspaper from 1997 – present. We will provide both this week.**

- **Documents related to the Times’s investigation of claims (RFP 19).** The Times agreed to produce documents relating to its investigation of the claims alleged in the Complaint. We have identified documents responsive to this request that appear to reference “infringement examples” and “investigations,” but have not received the underlying documents cited in these emails. While the Times has previously asserted that similar documents are protected by work product privilege, the examples we discussed on our call appear to have been prepared in the ordinary course of business. You stated that you disagreed with our characterization of the documents as non-privileged, but confirmed that as a general matter, the Times is producing responsive, **non-privileged** documents from custodial sources. You confirmed that any documents the Times claims are protected by the work product privilege will be listed on the privilege log. You stated that these productions would be complete when the Times has wrapped up custodial searches and conducted privilege re-review. **Noting that most of what The Times has reviewed on this Topic has been privileged.**
- **Documents and communications relating to licensing works to OpenAI to train ChatGPT (RFP 25).** The Times agreed to produce documents responsive to this request from November 2022 to May 2024. We have identified documents in the Times’s productions to date that reference coordination between the Times and individuals at NewsGuard, Bloomberg, BBC, and the Financial Times, but the productions appear to be missing additional discussions with these third parties. You agreed to review the documents to confirm whether responsive documents are missing and provide an update this week. **As noted on our call, we disagree with the characterization that The Times “coordinated” with these third parties. That aside, we’ve reviewed and can confirm that responsive, non-privileged documents related to the discussions flagged by OAI are being produced.**
- **Documents and communications relating to injury or harm (RFP 26).** The Times agreed to produce documents responsive to this request. While the Times has produced some documents containing high-level subscription and revenue figures, the productions to date do not appear to contain any information about specific damages or harm to subscription, advertising, licensing, or affiliate revenues. You confirmed that the Times expects to produce additional responsive documents and agreed to provide an update this week on more specific metrics for the forthcoming production.
 - On Monday’s meet and confer call regarding the Times’s responses and objections to OpenAI’s most recent set of discovery requests, we discussed the Times’s denial of RFA 30 (admit that you are unaware of any lost sales of any of the Asserted Works due to OpenAI’s alleged infringement of the Asserted Works). We asked you to confirm whether the Times is producing documents that would reflect those lost sales, and you stated that if the Times agreed to produce responsive documents to the corresponding RFP, the answer is yes. RFP 26 asks the Times to produce all documents and communications relating to injury or harm the Times claims to have suffered as a result of the conduct alleged in the Complaint; thus, documents reflecting lost sales that the Times claims is due to OpenAI’s alleged infringement would be responsive to this request. **To be clear, a model of “specific damages” is the subject of an expert report. However The Times has provided, and is continuing to provide, documents responsive to this RFP. It anticipates providing additional relevant metrics and reports in the coming weeks.**
- **Documents showing total revenue by source from January 2015 to present (RFP 27).** While the Times agreed to produce documents responsive to this request, the productions to date discussing the Times’s financial performance have been largely focused in the 2021-2024 date range. Additionally, the Times has produced very few documents that contain the breakdowns of revenue set forth in the request. You stated that the Times has provided a breakdown of revenue by subscription type going back to 2020, and data on advertising revenue dating back to 2020 and 2021. You confirmed that the Times will look into whether additional breakdowns and documents for earlier years exist and where those documents are maintained. **The Times’s Flash Book Reports, a number of which have been produced, reflect revenue by source. The Times will produce the remaining Flash Book reports going back to 2015.**
- **Documents calculating per-display revenues associated with Asserted Works by source (RFP 28).** The Times agreed to produce responsive documents to this request, but has not produced any documents in the productions to date. You confirmed that the Times is investigating whether per-display revenue is a metric that is maintained, and that you will provide us an update this week once the individuals investigating this question

are back in the office. **Based on The Times's investigation to date, The Times does not maintain data regarding per-display revenue.**

- **Documents related to social media sharing of the Asserted Works following publication (RFP 31).** To date, the Times's productions do not contain any documents responsive to this request despite the Times's agreement to produce. We asked you to confirm that the Times will produce these documents, or confirm that no such documents exist. You stated that the Times is still in the process of determining whether these documents exist, and will provide an update this week. **The Times does not have data reflecting confirmed user shares from its web domain on social media, and it does not have complete data on shares from mobile apps because, among other reasons, native mobile app iOS share features are not trackable. As such, The Times does not maintain data "sufficient to show the number of times each of [its] Asserted Works was shared on social media platforms for each hour of each day during the 14-day period following its publication," as requested by RFP 31.**
- **Documents relating to the Times's monthly expenses regarding creation of the Published Works, broken down by category or expense (RFP 32).** While the Times has produced some expense reports, these documents do not address the specific expenses segmented by category as described in the complaint, and as requested. Further, the reports we have received only date back to December 2022 and we are missing several monthly reports for 2023 and 2024. You confirmed that the Times would look into the missing months that we identified, as well as investigate whether the Times can produce earlier reports. You also agreed to look into whether the Times maintains documents with more segmented data. **The produced reports reflect the manner in which The Times's reports on its monthly expenses in the ordinary course. The Times will produce the remaining reports going back to 2015.**
- **Documents showing the number of the Times's active subscribers since 2015 (RFP 34).** The Times agreed to produce documents responsive to this request, but none of the documents it has produced thus far appear to show figures regarding monthly active subscribers or the number of active subscribers for the agreed-upon date range. You confirmed that you have produced a spreadsheet with monthly subscription data going back to 2015 as well as data regarding subscription-related revenue going back to 2020. However, you confirmed that you are still in the process of collecting documents with data going back to 2015, and that you would provide an update this week. **To clarify: we've provided granular monthly subscription data and related revenue back to 2020 and are working on updating that spreadsheet to go back to 2015. Are you asking about something different?**
- **Documents and communications relating to the use or potential use of Exclusion Protocols on the Times's website (RFP 38).** The Times agreed to produce documents responsive to this request, but it appears that the Times has not produced documents sufficient to show the time periods during which the Times implemented Exclusion Protocols on its website. You confirmed that you would continue to conduct targeted searches, and that you would provide an update this week. **The Times is continuing to conduct searches, including pursuant to search terms over more recently collected custodial documents (for instance, those of Christine Liang) and expects that responsive documents will be produced as custodial productions continue. The Times is continuing to look into whether there are non-custodial sources with responsive documents.**
- **Documents showing policies and procedures regarding use of third-party sources (RFP 39).** The Times has agreed to produce documents sufficient to show the Times's policies and procedures regarding the use of third-party sources in creating the Times's published content. However, it appears that no responsive documents have been produced. You confirmed that all responsive documents you have discovered so far are privileged, but that you would continue your search for non-privileged documents.
- **Documents regarding revenue from licenses through the CCC (RFP 53).** The Times has agreed to produce documents sufficient to show the Times's revenue generated from licenses through the Copyright Clearance Center each year from 2015 to the present. However, to date, it appears that we have received no documents responsive to this request. You stated that you would examine your productions in response to this request and confirm whether the data that this request seeks to obtain is available. Please confirm this week the results of your investigation into the collection of these documents, including your investigation into non-custodial sources. **The Times anticipates being able to provide this data.**
- **Documents and communications relating to the New York Times English Gigaword (RFP 54).** The Times agreed to produce documents responsive to this request, but it appears the Times has produced only four responsive

documents to date. You noted that there are a handful of additional documents that appear responsive to this request queued up in the next production. You also confirmed that the Times will continue to conduct targeted searches in addition to collecting documents that hit on search terms. You also stated that Greg Miller, not Evan Sandhaus, was the person most involved in the Gigaword. **Both Mr. Miller and Mr. Sandhaus were involved. Mr. Miller would be the primary source for information about The Times's relationship with LDC.**

- **Documents and communications relating to the New York Times Annotated Corpus (RFP 55).** The Times agreed to produce documents and communications relating to the New York Times Annotated Corpus of the Linguistic Data Consortium, but to date, it appears we have received just four responsive documents. You noted that you would look into the status of your collection and provide an update this week. **The Times has not located a large volume of non-privileged, responsive documents, but will continue producing those it does. As noted, we anticipate some of those will come from Greg Miller, whose custodial documents have not yet been reviewed and produced.**

We also asked about the status of collections for the 11 custodians added in October, and you stated that the Times has collected emails and data from certain files, but ran into technical difficulties with Slack collections. You agreed to provide an update this week regarding when the final collections will be completed. **The primary outstanding data source at this point is Slack. The Times has run into technical issues with its Slack pulls and is working with its vendor to get those resolved as promptly as it can.** You also agreed to provide us an update on the Times's positions after reviewing our December 26 correspondence regarding missing responsive documents. **We are continuing to work our way through the list of documents you provided and will follow up with a document-specific update.** We look forward to receiving your updates.

Best,
Emily

Emily Rose Orman

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